The two other specifications of error are to the charge of the court, in which we perceive no error under the circumstances mentioned by the judge.

Judgment affirmed.

Supreme Court of Indiana.

INDIANAPOLIS AND CINCINNATI RAILROAD CO. *v.* RUTHERFORD.[1]

It is negligence for a passenger in a railroad car to allow his arm to project out of the window, and if he receive injury from such position he cannot recover.

The railroad company is not bound to put bars across its windows to prevent passengers from putting their limbs out.

APPEAL from *Morgan Circuit Court.*

Suit was brought by Rutherford against the company for injury done him, whereby his arm was broken, the elbow being projected at the time out of the car window. The train, in passing on a side track, was compelled to run close to a water-tank, and against one of the heavy timbers of this his arm struck, causing the injury. In the court below, the plaintiff obtained a verdict for $700.

Oyler & Howe, for appellant.

The opinion of the court was delivered by

FRAZER, J.—[After disposing of some questions in regard to pleadings and instructions.]

The judgment cannot stand. Nothing is better settled than that in such a case, if the plaintiff's negligence has directly contributed to the injury, he cannot recover. A passenger is as much bound to use reasonable care to avoid injury, as the carrier is to use the greatest degree of skill and care to save the passengers from harm. Nor does the duty of the carrier extend to the imprisonment of the passenger, so as to prevent the latter, by his recklessness or folly, from voluntarily exposing himself to needless peril. Though a passenger, he is nevertheless a free man.

[1] We are indebted for this case to Oyler & Howe, Esqs., appellants' counsel.—EDS. AM. LAW REG.

Railway coaches are provided with windows to promote the health of passengers, by affording light and ventilation, and that the tedium of a journey may be relieved in some degree, and its pleasures enhanced, by viewing the objects along the route. The place for the passenger is inside, not outside, of the coach, and this is well known to everybody who ever saw a railway coach. The carrier is no more bound to barricade the windows to prevent passengers from extending their limbs outside, than he is to lock the doors to prevent them from going from car to car, when the train is in motion, and thus voluntarily subjecting themselves to the dangers obviously incident to that act of recklessness. The same reason which would require the one thing, would also require the other—nay, it is not easy to see why it would not require that the passenger should be so restrained of his liberty in every respect that he could not by any act of his own, put himself in unnecessary danger. Such a power in railroad officials must exist, if the duty to exercise it exist. The obligation to answer in damages cannot be separated from the authority to do what is necessary to avoid liability. The law recognises no such duty as resting upon carriers of passengers, nor have they any authority to exercise such unreasonable and annoying power over those whom they carry. Their passengers are not their slaves, nor are the latter absolved from the duty of using ordinary care for their own safety. Unwarranted, officious, and insulting interference with the liberty of passengers by railroads had proceeded in this state to such a point, that the legislature, at its last session, deemed it necessary to interfere, and impose severe penalties to prevent one form of the annoyance: Acts of 1867, p. 165.[1]

The proposition put forth by the court below for the guidance of the jury, that it is the duty of the carrier to barricade coach windows, &c., finds some sanction in *The New Jersey Railroad Co.* v. *Kennard*, 21 Penn. St. 203; but it is so entirely at variance with the weight of authority, and with elementary principles, that we cannot recognise it as good law. *Holbrook* v. *Schenectady Railroad Co.*, 12 N. Y. 236, is also relied upon by the appellee as sustaining the court, but in our opinion that case is very far from it. There was a controverted question whether the plaintiff's arm was inside or outside of the car when the injury

[1] This refers to the locking of car-doors while the train is in motion.—Eds. Am. Law Reg.

occurred. The court below had charged the jury that the railroad company only contracted to carry the passenger safely, provided she kept within the cars—that it was for the jury to say whether her elbow was out of the cars at the time it was injured; and if it was, then it was a fact from which they might infer want of ordinary care on her part. The defendant nad moved the court to instruct that if the jury found that the plaintiff's arm was outside the window when the injury was received, it was an act of negligence, and she could not recover. The chief question in the Appellate Court was whether the refusal of this instruction was error. That it was a correct statement of the law was not questioned in the Court of Appeals, either in the argument or in the opinion of the court. Indeed, the opinion is quite to the contrary; but there was held to have been no error in its refusal, for the sole reason that the lower court had charged the jury substantially in accordance with the request, and was right in declining to repeat it.

It cannot be necessary to cite authorities in support of the views upon this subject already announced in this opinion. We content ourselves with a reference to *Todd* v. *The Old Colony Railroad Co.*, 3 Allen 18, and *The Catawissa Railroad Co.* v. *Armstrong*, 49 Penn. St. 186, for a clear and forcible statement of the law upon the subject as it has been long settled.

Judgment reversed, with costs. Cause remanded for new trial.

In *Pittsburgh, &c., Railroad Co.* v. *McClurg*, ante, p. 277, the Supreme Court of Pennsylvania having occasion to consider the same point, came to the same view of the law, as the court in the preceding case, and expressly overruled the case of *New Jersey Railroad Co.* v. *Kennard*, 9 Harris 203, which had decided differently.

J. T. M.

Supreme Court of Illinois.

COLE *v.* VAN RIPER.

The Illinois Statute of 1861 giving a married woman exclusive control of her property, declaring that the same shall "be held, owned, possessed, and enjoyed by her, the same as though she was sole and unmarried," and exempting it from execution or attachment for the debts of her husband, does not give to her the